

**UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MASSACHUSETTS**

PRESIDENT AND FELLOWS OF
HARVARD COLLEGE and
MASSACHUSETTS INSTITUTE OF
TECHNOLOGY,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
HOMELAND SECURITY; UNITED
STATES IMMIGRATION AND
CUSTOMS ENFORCEMENT; CHAD F.
WOLF, in his official capacity as Acting
Secretary of the United States Department of
Homeland Security; and MATTHEW
ALBENCE, in his official capacity as Acting
Director United States Immigration and
Customs Enforcement,

Defendants.

Civil Action No. 1:20-cv-11283-ADB

SUPPLEMENTAL DECLARATION OF ALAN M. GARBER

I, Alan M. Garber, hereby state under the penalty of perjury that the following statements are true and accurate to the best of my knowledge, and that I could testify to these matters if called to do so:

1. I am Provost of Harvard University (“Harvard” or the “University”). I submit this declaration to provide additional information regarding Harvard’s planning process for the fall semester, the difficulties of changing course, and the effects that the COVID-19 and Fall 2020 directive issued by the United States Customs and Immigration Enforcement (“ICE”) on July 6, 2020 (“July 6 Directive”) will have on Harvard and its students. The information contained in this declaration is based on my personal knowledge and, in some instances, on facts I have learned from

others within the Harvard community, including faculty and staff involved in the University's COVID-19 operational plans and the University's efforts to support international students.

2. As described in my July 8, 2020 declaration, the Harvard administration spent a tremendous amount of time planning for the fall semester, including convening committees, engaging experts, and working with faculty and staff in all of the Schools across the University. One overarching goal has informed all of our deliberations since March 2020: safely making the University fully operational as soon as possible.

3. We began planning for the fall semester in March 2020 with that goal in mind. Beginning the preparations for the fall semester so soon after the onset of the pandemic in the United States allowed each School, and the University as a whole, to create plans and procedures designed to protect the safety of our students, faculty, and staff, while also balancing important pedagogical interests. That balance will, in turn, lead to the University being positioned to become fully operational in-person more quickly than if we commenced in-person operations too hastily, in which case we might set in motion events that would once again force the University to shut down operations.

4. More specifically, we have been, and continue to be, concerned that if we scale up operations too quickly, or invite too many people to live on campus too soon, we could face an outbreak that would leave us no choice but to once again shut down campus entirely and send students home. In that case, we would face two sets of challenges: the significant short-term challenges associated with shutting down campus and the long-term challenges of effectively and safely reopening campus a second time. We came to the conclusion that if we did not reopen with sufficient safeguards, Harvard would ultimately face much longer delays before it became fully operational.

5. I described in my July 8 declaration many of the planning activities Harvard's central administration took to prepare for the fall semester. Harvard's Schools also undertook extensive planning activities. In March 2020, all 12 Harvard Schools were asked to consider the possibility of three scenarios for the fall semester: (1) a near-normal semester of in-person learning, with most or all students on campus, possibly with physical distancing requirements in place; (2) remote teaching for all or a large part of fall semester, with some instruction online and some in-person; and (3) deferring instruction to a later date.

6. Each School then began its own assessments. For example, the Faculty of Arts and Sciences, which includes Harvard College, announced 11 working groups to inform its decision-making. Those working groups covered such topics as preparing undergraduate housing for safe operations, identifying conditions that would allow for the return of a substantial number of students, scheduling classes, implementing testing and contact tracing, and addressing financial planning.

7. In addition to the extensive coordination between the central administration and Harvard's individual Schools (and the myriad committees those Schools formed), Harvard relied heavily on modeling and research by public health and medical experts, including Rochelle Walensky, the Chief of Infectious Diseases at Massachusetts General Hospital and a Professor at Harvard Medical School; David Paltiel, a Professor of Public Health at the Yale School of Public Health and Co-Director of the Public Health Modeling Concentration; and Marc Lipsitch, Professor of Epidemiology at the Harvard T.H. Chan School of Public Health, along with his colleagues at the School's Center for Communicable Disease Dynamics. Those experts assisted in modeling the likely duration of the pandemic, the probability of a second wave of cases, and different testing and contact tracing scenarios at Harvard.

8. The central administration and Harvard's Schools used that expertise and the collaboration with faculty, students, and staff to establish a considered plan for the fall semester.

9. To achieve our overarching goal to return to full operations while also prioritizing the health and safety of the Harvard community and providing high-quality education, we considered a number of public health, pedagogical, and community concerns.

10. Among the public health and safety concerns at the forefront of our decision-making were:

a. We considered the ventilation in our classrooms and the likely duration of exposure during various types of lectures and seminars. These considerations involved granular discussions between members of the facilities team, the central administration, and faculty and department heads in charge of curriculum planning. In a number of our classrooms, the ventilation is not sufficient to allow a class of typical size to use the space and maintain adequate safety protocols. To take one example, we have created an inventory of the 417 available instructional rooms at the Faculty of Arts and Sciences, which includes Harvard College. For those instructional rooms, we have detailed the square footage per room and considered the long-term occupational density requirements that we would need to impose in those classrooms.

b. As described in my July 8 declaration, the median age of the faculty members of the Faculty of Arts and Sciences, which includes Harvard College, is over 60. Given the age of many of our faculty members, they are at higher risk of developing complications from COVID-19.

c. Harvard is also cognizant of its duty to be a good citizen of the City of Cambridge and the Greater Boston area. While there is tremendous value to maintaining a rigorous and vibrant academic community in our cities, Harvard is concerned about contributing to the number of COVID-19 cases in Cambridge and Boston and making it more

difficult for the metropolitan area and the entire Commonwealth to keep the number of cases at manageable levels for our hospitals and their intensive care units.

d. We have also considered the practical effects of gathering thousands of students in one place. The recent upward trend in COVID-19 cases throughout many parts of the country has confirmed many of the assumptions underlying our modeling. When restrictions are relaxed and people are allowed to gather in large groups—especially indoors—the number of COVID-19 cases begins to rise. The close quarters in classrooms, dormitories, and dining halls would exacerbate the effects of any gathering. Even with masking and physical distancing requirements in place, students would need to take masks off to eat or drink, and in noisy spaces would likely take masks off and raise the volume of their voices, increasing the likelihood of transmission. In recent days, the trend in the number of deaths attributable to COVID-19 seems to have followed the rising number of COVID-19 cases, reinforcing the potential harms of allowing a return to normal gathering and interaction too quickly.

11. The central administration and members of each individual School also spent months analyzing the pedagogical impacts of the various educational models that we considered implementing this fall.

a. Fundamentally, remote and in-person learning entail very different needs. We understood early on in the process (and with the aid of a partial spring semester of virtual learning experience to draw from), that it is possible to optimize a class, lecture, lab, or seminar for in-person learning or for remote learning, but it is very difficult to simultaneously do both well. Each School and program is different, and the faculty of each School worked diligently to determine which educational model would best promote learning. That input from faculty led most of Harvard's Schools to conclude that a fully remote option was the

better pedagogical choice for the fall. Many faculty members indicated to the central administration that they would be more successful if they sought to optimize their courses for a remote model, rather than designing a dual program that tried to serve students both in-person and online.

b. Harvard also operated with the understanding that, if courses were designed for an in-person model—in other words, conventional classroom teaching—a rapid shift to online teaching would compromise learning. We therefore concluded that it was preferable to design remote curricula at the outset, rather than being forced to revert to remote learning after returning to an in-person model.

12. When the majority of Harvard's Schools made the decision to be fully remote in Fall 2020, we understood that we could not entirely stop the incidence of COVID-19 on campus. We seek to minimize the risk that any of our students, faculty, or staff will contract COVID-19. We are particularly focused on preventing an outbreak that is large enough to warrant shutting down campus. We have instituted a number of guidelines to do so, including converting on-campus housing to single-occupancy rooms, allowing no more than two students to share a bathroom, and creating a testing and tracing protocol for those living on campus.

13. In making its decisions for the fall semester, Harvard relied on the COVID-19: Guidance for SEVP Stakeholders issued by ICE on March 13, 2020 ("March 13 Guidance"). In particular, Harvard relied on the assurances that the March 13 Guidance would remain "in effect for the duration of the emergency" in formulating its careful plans for the semester.

14. The March 13 Guidance allowed Harvard and other universities the flexibility to operate in a way that protected the health and safety of its students, faculty, and staff, while also providing the best education possible during a global pandemic. Since at least March, the various committees, working groups, administrators, faculty, and staff tasked with planning for the fall

semester have relied on the March 13 Guidance to inform their decisions. The July 6 Directive asks us to sacrifice those careful judgments in a time frame that is very difficult, if not impossible.

15. Harvard made a number of important scheduling decisions based on the March 13 guidance. These deadlines are not arbitrary. Each deadline is set for a reason, because information provided prior to those deadlines allows the University to plan every aspect of the fall semester, such as housing needs, class schedules and capacity, and finances. A number of those deadlines are imminent. For example, the deadline for Harvard College students to petition to live on campus this fall is today, July 13; the deadline for Harvard College students to confirm their fall enrollment plans, including requesting a deferral or leave of absence and confirming housing plans, is July 24; the fall tuition deadline is August 15; and the class registration deadline is August 26. Each deadline is in place so that we are ready to begin classes on September 2.

16. To determine how best to assist our F-1 visa students, we have collected information in the last week about the impact of the July 6 Directive on our students. What follows is just a sampling of the ways in which the July 6 Directive impacts Harvard students:

a. The Harvard Kennedy School, for example, has over 100 returning international students who are studying in the United States on F-1 visas. A survey conducted by the Kennedy School indicates that more than half of these students are considering taking a leave of absence due to the July 6 Directive. That loss would fundamentally alter the nature of the program at the Kennedy School. As described in Mark Elliott's July 8 declaration, the curriculum at the Kennedy School depends on the contributions of international students because they offer unique perspectives about different approaches to governance and policy.

b. Many students indicated that they have concerns about losing their chance to use the Optional Practical Training benefit of the F-1 visa to seek employment opportunities. If students cannot re-enter the country due to travel restrictions or closures of consular

services, they would be ineligible for OPT, an important benefit to the students and to employers.

17. The number of students affected by the July 6 Directive in varying ways is staggering and demonstrates the impact of the July 6 Directive on the Harvard community. More than 4,000 students at Harvard are studying on F-1 visas.

a. Approximately 2,000 of Harvard's F-1 visa students are from countries subject to a COVID-19-related or other ban on travel into the United States, meaning they may not be able to return to the United States when their programs are no longer fully remote.

b. Many students are from countries that are deemed to be unsafe. For example, more than 1,000 F-1 visa students are from countries subject to "Do Not Travel" advisories issued by the U.S. Department of State, and over 100 students are from countries undergoing humanitarian crises.

c. Many students would face practical challenges if forced to leave the United States to conduct remote learning. More than 3,000 of Harvard's F-1 visa students are from countries with a time zone difference of six or more hours from Cambridge. Although Harvard is exploring ways to accommodate this issue, time differences are likely to pose a challenge for many students. Over 1,000 of Harvard's F-1 visa students are from countries with blocked or restricted Internet access including Ethiopia, China, and Syria.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 13, 2020

/s/ Alan M. Garber

Alan M. Garber